

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

<b>NORMAN E. LACEY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO: 3:06-CV-1145-MEF</b>
	)	
<b>CITY OF AUBURN,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

**OPPOSITION TO DEFENDANT’S FIFTH  
MOTION IN LIMINE**

Comes now, Norman Lacey, in the above styled action and opposes the Defendant City of Auburn’s Fifth Motion in Limine.

Defendant seeks an order barring consideration of liquidated damages.

In *Morgado v. Birmingham-Jefferson County Civil Defense Corps*, 706 F.2d 1184 (11th Cir. 1983), the Court explains that liquidated damages under the Equal Pay Act are not the same as punitive damage claims under 42 U.S.C. 1983 from which municipalities are immune. In that case, the Court of Appeals approved the award of liquidated damages against a government entity. *Id.*

More recently in *Cooper v. Fulton County, Georgia*, 458 F.2d 1282, (11<sup>th</sup> Cir. 2006), the Court affirmed the award of liquidated damages when a county

employer was found to violated the Family Medical Leave Act.

**Wherefore premises considered**, Lacey requests that the jury be allowed to consider liquidated damages in the event of a liability finding and the Defendant's Fifth Motion In Limine be denied.

Respectfully submitted,  
/s/Roderick T. Cooks  
Attorney for the Plaintiff

**OF COUNSEL:**  
WINSTON COOKS, LLC  
The Penick Building  
319-17th Street North  
Birmingham, AL 35203  
Tel: (205)502-0970  
Fax: (205)251-0231  
email: [rcooks@winstoncooks.com](mailto:rcooks@winstoncooks.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document on all persons listed below by CMF/Electronic Mail and addressed to them as follows:

Randall Morgan, Esq.  
Elizabeth Brannen Carter, Esq.  
Hill, Hill, Carter, Franco,  
Cole & Black, P.C.  
425 South Perry Street  
Montgomery, Alabama 36104  
334-834-7600

Done this the 16th day of April, 2008.

/s/Roderick T. Cooks  
Of Counsel